



State of South Carolina

Office of the Governor

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February 21, 2006

The Honorable Robert W. Harrell, Jr.
Speaker of the House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I believe that we must always stand fast against the government taking or regulating away the use of property. As Thomas Jefferson said, "The true foundation of republican government is the equal right of every citizen in his person and property and in their management." Private property rights are fundamental to a free society, and I appreciate your efforts to address them in H. 3381.

The protection of private property rights is also essential to our market-based economy. Recognition of those rights provides the legal certainty necessary for individuals to commit resources to ventures. And those rights provide the basis for the development of financial markets that are essential for economic growth and development.

For these reasons, I have consistently acted to protect private property rights and fight unnecessary government regulation. For example, as a member of the 106th Congress, I voted for the Private Property Rights Implementation Act to give greater access to federal courts for individuals with property grievances against the government. In March 2004, I vetoed S. 560, the Life Sciences Act, in part because it extended the awesome power of eminent domain to dozens of new entities by including all state institutions of higher learning. In May 2004, I signed into law H. 4130 – commonly referred to as "The Small Business Regulatory Relief Act" – to require state agencies to consider their impact on small business before they issue final regulations. In June 2005, I vetoed S. 97 because it opened the door for more property, including agricultural, to be declared blighted or abandoned and subsequently condemned.

Given the importance of protecting private property rights, I recognize the need for a uniform approach to takings that is consistent with the overall purposes of the just compensation provision of Article 1, Section 13 of the South Carolina Constitution. Unfortunately, for the three specific reasons set forth below, I do not believe H. 3381 represents that uniform approach.

In my judgment, at least part of the reason why H. 3381 is not a consistent approach to the question of takings stems from the fact that the public debate on this particular bill has taken place in the narrow context of special legislation affecting one particular industry - an approach to legislative debate which, in my opinion, does not fit with the spirit of Article III, Section 34, IX of the South Carolina Constitution, which provides that: "In all other cases where general law can be made applicable, no special law shall be enacted ..."

A broader public debate on the issue of just compensation for takings is now taking place in the General Assembly in connection with the eminent domain bills pending in the House and Senate (H. 4502, H. 4505, S. 1029, S. 1030 and S. 1031), and it is my hope and expectation that the three specific concerns I have in regard to H. 3381 will be considered as that broader public debate moves forward. Accordingly, I am hereby returning H. 3381, R 233 without my approval for the following reasons:

First, the bill would not treat billboard owners and billboard tenants as we treat other property owners and other business tenants. This bill seeks to level the playing field by putting billboards on par with other asset classes but actually serves to set billboards apart. H. 3381 would treat billboards as real property for compensation, while they would be considered as personal property for taxing purposes.

As a matter of public policy, I believe billboards should be treated as we treat other property owners, but not put in a position superior to homeowners, farmers and other businesses. Currently, billboard owners pay personal property taxes based on the sign's original cost less depreciation, and accordingly, just compensation is determined in the same way. Likewise, if the government takes a home to build a road, one value system for real property is applied for taxes and compensation. In effect, H. 3381 would give billboard owners the tax benefits of being classified as personal property and the just compensation benefits of being classified as real property which is not something enjoyed by the other asset classes just listed.

Second, I do not think that we should have one standard for state government and another standard for local government. H. 3381 would establish a double standard in that the new compensation requirements for removing billboards would apply only to local governments, not state agencies.

Again, I think we ought to treat government at different levels consistently. Under H. 3381, local governments are held to a higher standard than the state when calculating just compensation, in that local governments are required to utilize the Uniform Standards of Professional Appraisal Practices, including a number of mandatory considerations, when calculating the amount of just compensation due the billboard owner, whereas the state is not. I do not believe it is good public policy to maintain two sets of pricing - one for state government and another for local governments. I think when we look at something as fundamental as private property rights they should be consistently administered.

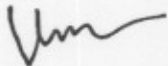
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Third, I think we need to be careful about saying we believe in Home Rule as a governing principle, but then reverse local governments' decisions when they disagree with the state on an issue like this one. With a retroactive effective date of April 14, 2005, the bill would invalidate at least seven billboard ordinances that were passed legally by local governments. I believe that tossing out the ordinances of one group of local governments while respecting the ordinances of others – both of which were passed subject to the laws in place at that time – raises once again the uniformity issue that has caused me to struggle with this bill. Why should two local governments, under the same circumstances and afforded the same privileges of Home Rule, be treated differently?

Finally, as a matter of consistency, I believe that this bill undermines the very principle it purports to represent. By limiting the use of billboards by owners, certain provisions of this bill essentially constitute a regulatory taking without providing for just compensation – quite the opposite, I believe, of what the bill seeks to achieve. In keeping with the notion of federalism, I believe that all levels of government have to more clearly define their roles and responsibilities, and the way a community looks and feels should fundamentally be a local municipal or county decision. I do not believe it is the role of the state legislature to determine community standards from Columbia by regulating the content of billboards in the many towns and counties across South Carolina.

For these reasons, I am hereby vetoing and returning without my approval H. 3381.

Sincerely,

A handwritten signature in dark ink, appearing to be 'M. Sanford', written in a cursive style.

Mark Sanford